

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2299**

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**Introduced by Assembly Member Blakeslee**

February 18, 2010

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An act to add Section 39602.7 to the Health and Safety Code, relating to air pollution.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2299, as amended, Blakeslee. State Air Resources Board: rules and regulations: impacts analysis.

Existing law authorizes the State Air Resources Board to regulate pollution from primarily vehicular sources, and designates the state board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases.

This bill would require the state board to complete and place into the rulemaking record ~~an~~ *a related* impacts analysis for a proposed rule, as provided. The bill would authorize a person to request the state board to submit the *related* impacts analysis for external peer review in accordance with specified requirements. *The state board would be authorized to assess a fee on a person making a request for external peer review to cover the administrative costs of processing that request.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 39602.7 is added to the Health and Safety Code, to read:

39602.7. (a) For the purposes of this section, the following terms have the following meanings:

(1) ~~“Air quality basis” mean those foundations of a rule that are premised upon, or derived from, empirical data or other scientific findings, conclusions, or assumptions establishing a regulatory level, standard, or other requirement for the improvement of air quality to protect public health or the environment.~~

(1) *“Related impacts” means the reasonably identifiable and significant impacts of a proposed rule, that are premised upon, or derived from, empirical data or other scientific or economic findings, conclusions, or assumptions, including, but not limited to, impacts to any of the following:*

(A) *Other statutory and regulatory programs and standards, under the jurisdiction of the Public Utilities Commission or any department within the California Environmental Protection Agency or the Natural Resources Agency.*

(B) *In-state jobs.*

(C) *The General Fund and special funds due to changes in economic activity.*

(2) ~~“Impacts”~~ *“Related impacts analysis” means an evaluation of the secondary related impacts of a proposed rule quantified to the extent feasible and appropriate and otherwise qualitatively described.*

(3) *“Rule” means a rule, regulation, order, or standard or the amendment, supplement, or revision of a rule, regulation, order, or standard, adopted by the state board to implement, interpret, or make specific a law enforced or administered by the state board, or to govern the state board’s procedure.*

(4) ~~“Secondary impacts” means the reasonably identifiable and significant impacts of a proposed rule that do not meet the definition of “air quality basis” and that are premised upon, or derived from, empirical data or other scientific or economic findings, conclusions, or assumptions, which include, but are not limited to, impacts to any of the following:~~

(A) ~~Public health and safety not related to air quality.~~

(B) ~~Other environmental regulatory programs and objectives.~~

1 ~~(C) In-state jobs.~~

2 ~~(D) The General Fund due to in-state job impacts.~~

3 ~~(E) Economic impacts to persons regulated by the proposed~~  
4 ~~rule.~~

5 (b) The state board shall complete and place into the rulemaking  
6 record for a proposed rule ~~an~~ *a related* impacts analysis for the  
7 proposed rule, at or before the time the proposed rule is made  
8 available to the public, at a public workshop or for purposes of  
9 public comment.

10 (c) (1) Within 15 calendar days after the date the proposed rule  
11 is made available to the public as described in subdivision (b), a  
12 person may request the state board to submit the *related* impacts  
13 analysis created pursuant to subdivision (b) for external peer review  
14 pursuant to this subdivision *for any proposed rule determined by*  
15 *the state board to have a positive or negative economic impact of*  
16 *at least ten million dollars (\$10,000,000). The state board may*  
17 *assess a fee not to exceed five hundred dollars (\$500) on a person*  
18 *making a request pursuant to this paragraph to cover the*  
19 *administrative costs of processing that request.*

20 (2) If, within ~~15~~ 30 calendar days after making the request, the  
21 person requesting the external peer review enters into an  
22 enforceable agreement with the state board that requires that person  
23 to fully reimburse the state board for all costs associated with  
24 conducting the external peer review, the state board shall enter  
25 into an agreement with the National Bureau of Economic Research,  
26 the University of California, the California State University, or a  
27 group of economists of comparable stature and qualifications to  
28 conduct the external peer review of the *related* impacts analysis  
29 of the rule proposed for adoption. ~~The President of the University~~  
30 ~~of California is requested to select the peer review entity for~~  
31 ~~purposes of this paragraph.~~

32 (d) (1) *The state board shall use the process for selecting*  
33 *external peer reviewers adopted pursuant to Section 57004, except*  
34 *as otherwise provided in this subdivision.*

35 ~~(d) (1)–~~

36 (2) A person shall not serve as an external peer reviewer  
37 pursuant to subdivision (c) if that person participated in the  
38 development of the impacts analysis of the proposed rule.

39 ~~(2)~~

(3) The person who requests the external peer review pursuant to this section, a person affiliated with that requester, and personnel of the state board shall not participate in the selection of the individual external peer reviewers or contact or communicate with the individual external peer reviewer during the peer review.

~~(3)~~

(4) The state board may contact or communicate with an external peer reviewer for the purpose of entering into a contract with the reviewer, as described in subdivision (c), and for purposes of providing information as described in paragraph (1) of subdivision (e).

~~(4)~~

(5) The identity of the individual external peer reviewers shall remain confidential until the external peer reviewer submits the written report to the state board.

~~(e) If the requirement of paragraph (2) of subdivision (e) is~~  
*requirements of subdivision (c) are met*, the state board shall not take any action to adopt the final version of a rule unless all of the following conditions are met:

(1) The state board submits the *related* proposed rule, including the impacts analysis, and other appropriate materials on which the *related* impacts analysis of the proposed rule are based, to the external peer reviewer for evaluation.

(2) The external peer review entity prepares a written report that contains an evaluation of the *related* impacts analysis within 90 days of receiving the materials listed in paragraph (1) from the state board. If the external peer review entity finds that the state board has failed to demonstrate that the *related* impacts analysis is based upon sound scientific or economic knowledge, methods, or practices, the report shall state that finding and the reasons explaining that finding.

(3) The state board accepts the finding of the external peer review entity, in whole or in part, and revises the proposed rule accordingly, or rejects the finding. If the state board disagrees with any aspect of the findings of the external peer review entity, it shall explain, and include as part of the rulemaking record, its basis for arriving at that determination in the adoption of the final rule, including why it has determined that the *related* impacts analysis is based on sound scientific and economic knowledge, methods, and practices.

1 (4) A public hearing is conducted to provide opportunity for  
2 public comment on the written report of the external peer review  
3 entity or public comment on the explanation of disagreement with  
4 the report included in the rulemaking record by the state board.  
5 The state board shall not issue notice of a public hearing on  
6 adoption of the final version of a rule until the public hearing  
7 described in this paragraph has concluded.

8 (f) Notwithstanding subdivision (e), if the external peer review  
9 entity fails to provide a written report within 90 days, the state  
10 board may act to adopt the final version of the rule.

11 (g) The requirements of this section do not apply to an  
12 emergency regulation adopted pursuant to subdivision (b) of  
13 Section 11346.1 of the Government Code.

14 (h) This section shall not be construed to limit the authority of  
15 the state board to adopt a rule pursuant to the requirements of any  
16 other law that authorizes or requires the adoption of the rule.